SUPREME COURT OF THE UNITED STATES

DUNCAN PEDER McKENZIE, JR. *v.* JACK McCORMICK, WARDEN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 88-5276. Decided October 11, 1988

The petition for a writ of certiorari is denied.

JUSTICE BRENNAN, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg* v. *Georgia*, 428 U. S. 153, 227 (1976), I would grant certiorari and vacate the death sentence in this case.

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition for writ of certiorari and vacate the death sentence in this case. But even if I believed that the death penalty could be constitutionally imposed under certain circumstances, I would grant the petition and vacate petitioner's death sentence for the reasons I expressed in *McKenzie* v. *Montana*, 449 U. S. 1050 (1980) (MARSHALL, J., dissenting from denial of certiorari).

JUSTICE KENNEDY took no part in the consideration or decision of this petition.